IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 91/2004
(Umrao Singh Vs. State of Rajasthan & Ors.)

Date of Order : 27/11/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Rakesh Arora for the petitioner.
Mr. Sandeep Mehta for the non-petitioners.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 23.1.2004 passed by Additional District Magistrate (City), Udaipur (for short 'the Executive Magistrate' hereinafter) whereby the Executive Magistrate drawn the preliminary order under Sub-section (1) of Section 145 Cr.P.C. and directed the parties to file their respective claims and written statement by 31.1.2004 either personally or through pleader. By the very order dated 23.1.2004, the Executive Magistrate directed to return the possession taken by party No.2 to Party No.1 who are non-petitioners No. 2 to 6 herein.

Sub-section (4) of Section 145 Cr.P.C. provides that

the Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and if possible decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute.

In the instant case, admittedly even the parties were not allowed to file the claim as the matter was posted for filing claim on 31.1.2004 and before that date on 23.1.2004 itself the Executive Magistrate directed the petitioner to hand over the possession to non-petitioners No. 2 to 6. This shows that the order passed by the Executive Magistrate is totally in violation of the provisions of law and is also total non-application of mind. It also appears that there is no subjective satisfaction of the Magistrate that the dispute relating to the land concerned or water is likely to result in breach of peace. Sub-section (1) of Section 145 Cr.P.C. provides that whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the

parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

From the perusal of the order impugned dated 23.1.2004 though expression 'Preliminary Order' has been used but there is no satisfaction of the Magistrate in the order impugned that he was satisfied on the basis of the information received by him a dispute likely to cause a breach of peace exists. In the circumstances therefore, both the orders dated 23.1.2004 Annex.18 and Annex.19 deserves to be set aside.

In the result, the criminal misc. petition is allowed. The orders impugned Annex.18 and Annex.19 dated 23.1.2004 passed by Executive Magistrate are set aside. Stay petition also stands disposed of.

(H.R.PANWAR),J.

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